

Department of Labor and Industry
Board of Personnel Appeals
PO Box 201503
Helena, MT 59620-1503
(406) 444-2718

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 1-2013

BEN I. AMIN,)	
Complainant,)	
-vs-)	INVESTIGATIVE REPORT
)	AND
ROBERT CARLSON, PRESIDENT,)	NOTICE OF INTENT TO DISMISS
AFSCME LOCAL 3034,)	
Defendant.)	

I. Introduction and Background

On July 11, 2012, Ben I. Amin filed an unfair labor practice charge with the Board of Personnel Appeals (Board) alleging that Robert Carlson, President of AFSCME Local 3034, violated Section 39-31-402 (2), MCA, by failing to bargain in good faith with the City of Libby. Robert Carlson responded to the charge in a timely manner denying that an unfair labor practice had been committed.

John Andrew was assigned by the Board to investigate the charge and has communicated with the parties in the course of the investigation.

II. Findings and Discussion

The basis of this complaint is found in the negotiations between Local 3034 and the City of Libby for a successor contract to an agreement, the terms of which expired June 30, 2012. The City and Local 3034 are continuing their bargaining with another negotiation session scheduled for August 1, 2012.

The bargaining unit in question is described in the recognition clause of the bargaining agreement as:

In compliance with the provisions of the Montana Public Employees Collective Bargaining Act, as amended, and pursuant to certification of the Montana Department of Labor and Industry, Board of Personnel Appeals, Case No. 1624-2001, the Employer recognizes the Union as the exclusive bargaining representative of all full-time and regular part-time employees of the City of Libby, Libby, Montana, but excluding all supervisory, managerial, confidential, the Chief of Police, temporary employees, seasonal

1 employees working less than 180 days in any fiscal year and other employees excluded
2 pursuant to the terms of the aforementioned Act.
3

4 Since this is a "wall to wall" unit the union negotiating team consists of employees from each
5 of the City departments covered by the bargaining agreement. Members of the negotiating
6 team and the areas they represent are:
7

8 Robert Carlson – Water Distribution Department
9 Steve Hogan - Street Department
10 Jessica Obrecht – City Hall – Office Staff
11 Mike Voorhies – Waste Water Department
12 Jeff Haugen – Water Treatment Department
13 Alice Sowa – Police Department
14

15 Because Officer Sowa is scheduled for military duty in July of 2012, Officer Amin has
16 taken her place in the negotiation process.
17

18 The contention of Officer Amin is that President Carlson, and by implication, the
19 remainder of the bargaining unit did not properly notify police employees of changes in
20 bargaining proposals. This is disputed by President Carlson. In general terms, it is well
21 recognized that in any "wall to wall" bargaining unit employees in one department will
22 likely have different priorities and needs than those in other departments. As a result, in
23 the give and take of formulating proposals the priorities and needs of one department
24 may not be the priorities of the overall unit, so, they are not advanced to management.
25 In the instant case, and by way of example, police department employees wished to
26 discuss direct deposit as part of the bargaining process. The remainder of the unit
27 reviewed the idea, tested its feasibility/overall practicality, and ultimately decided to not
28 take direct deposit to the table. Other items requested by the police have been
29 advanced. In fact, an addendum addressing police issues specifically (Addendum B)
30 has been proposed by Local 3034. In short, in the internal give and take in the
31 bargaining unit, some things proposed by the police have been advanced to
32 management, and others have not. Nothing in this case points to undue or unwarranted
33 actions by the bargaining team when it formulated bargaining unit proposals to take to
34 management. Perhaps communication may not have been perfect within the bargaining
35 unit, but proposals from the police department were considered and even as late as
36 June 20, 2012 Alice Sowa was advised of the possibility of additional items being
37 brought to the table. Nothing indicates wrongdoing by Local 3034.
38

39 The above notwithstanding, there is a fundamental flaw in the unfair labor practice
40 charge. Ben Amin is a member of the bargaining unit. More importantly, he is not a
41 member of the management structure of the City of Libby. Section 39-31-402(2), MCA
42 provides that it is an unfair labor practice for a labor organization or its agents to refuse
43 to bargain collectively in good faith with a public employer. The City of Libby has made
44 no allegations that Local 3034 has refused to bargain in good faith with the City. The
45 City and Local 3034 continue to bargain and the next negotiation session is scheduled
46 for August 1, 2012. Simply stated, Ben Amin does not have standing to bring a bad
47 faith bargaining charge against his exclusive representative. The ability to bring such a
48 charge rests with the City. What Officer Amin alleges is, at best, a matter internal to
49 Local 3034. The investigator can find no basis for the complaint.
50

1
2 **III. Recommended Order**
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4 It is hereby recommended that Unfair Labor Practice Charge 1-2013 be dismissed as
5 without merit.
6

7 DATED this 26th day of July 2012.
8
9

10 BOARD OF PERSONNEL APPEALS
11
12

13 By: _____
14 John Andrew
15 Investigator
16
17

18
19 NOTICE
20

21 Pursuant to 39-31-405 (2), MCA, if a finding of no probable merit is made by an agent of
22 the Board a Notice of Intent to Dismiss is to be issued. The Notice of Intent to Dismiss
23 may be appealed to the Board. The appeal must be in writing and must be made within
24 10 days of receipt of the Notice of Intent to Dismiss. The appeal is to be filed with the
25 Board at P.O. 201503, Helena, MT 59620-1503. If an appeal is not filed the decision to
26 dismiss becomes a final order of the Board.
27

28
29 * * * * *

30 CERTIFICATE OF MAILING
31

32 I, _____, do hereby certify that a true and correct copy
33 of this document was mailed to the following on the _____ day of _____
34 2012, postage paid and addressed as follows:
35
36

37
38 ROBERT CARLSON
39 AFSCME LOCAL 3034
40 952 EAST SPRUCE STREET
41 LIBBY MT 59923
42

43 BEN I AMIN
44 LIBBY POLICE DEPARTMENT
45 603 MINERAL
46 LIBBY MT 59923
47
48
49
50